IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7427 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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TUSHAR ARVINDBHAI DAVE

Versus

COMMISSIONER OF POLICE

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Appearance:

MR PRAVIN GONDALIYA for Petitioner

MR HN SOMPURA AGP for Respondent-State.

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/08/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 ( hereinafter referred to as " the Act of 1985" ) by the order dated 25-10-99 passed by the Police Commissioner, Rajkot City, and he has been declared as dangerous person.

2. It is a settled principles of law that in order

to bring a person within the expression " dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-social Activities Act, 1985, ( for short " the Act of 1985 " ), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2 (c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression " public order". A distinction has to be drawn between the " law and order " and " maintenance of public order ". A reference may be made of M.J.Shaikh v. M.M.Mehta, Comissioner of Police & Ors. reported in 1995 (2) GLR 1268.

3. Learned counsel for the petitioner has submitted that although there are several grounds on which the detention order can be quashed, but according to him detention order deserves to be set aside only on the short ground that the translated copies of the documents enclosed with the grounds of detention at page 3,5,21,23,39, 41, 63 and 65 from English to Gujarati were not supplied to him, while Gujarati is the language which the petitioner knows and understands. It has been submitted that the aforesaid documents were vital and the non-supply of the translation thereof in the language which the petitioner knows and understands is fatal to the detention and on this account his right of making effective representation under Article 22 (5) of the Constitution has been seriously affected. In support of the contention,learned advocate for the petitioner has relied upon a decision reported in 2000 (2) G.L.H. 540, Koli Sureshbhai Balabhai Parmar vs. District Magistrate, Bhavnagar, wherein it is held as under.

> "What applies to a document would equally apply to furnishing translated copy of the document in the language known to and understood by the detenu, should the document be in a different language."

In the aforesaid reported judgment it is further held that :

> "In the facts of the present case non supply of the translation of the bail order and the conditions of bail at page Nos. 13 to 19 and 22 i.e. non supply of the documents, which were

vital to the grounds of detention, has affected the petitioner's right under Article 22 (5) of the Constitution of India. This Special Civil Application, therefore, deserves to be allowed on this ground alone and, therefore, it is not necessary for me to consider the other grounds on which the detention order has been sought to be assailed."

4. Since the petitioner succeeds only on this point, learned advocate for the petitioner does not press any other points.

6. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 25-10-99 passed against the detenu is hereby quashed. The petitioner-detenu Tushar Arvindbhai Dave is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

( R.P.Dholakia, J.)

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